

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

THE NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
INC.; THE NATIONAL ASSOCIATION FOR  
THE ADVANCEMENT OF COLORED  
PEOPLE, INC., CONWAY BRANCH;  
CLAYTON BROWN; JERMAINE BROWN;  
and KRIS BRYANT,

Plaintiffs,

v.

LEFTIS FOODS, INC., d/b/a PAN  
AMERICAN PANCAKE & OMELET  
HOUSE,

Defendants.

Civil Action No.: 4:11-CV-01295-RBH

**PLAINTIFFS' MOTION TO DISMISS  
THE COUNTERCLAIM**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the National Association for the Advancement of Colored People, Inc. ("NAACP"), the NAACP's Conway Branch, Clayton Brown, Jermaine Brown, and Kris Bryant (collectively, "Plaintiffs") respectfully move for an order dismissing the Counterclaim filed by Leftis Foods, Inc. and Pan American Pancake & Omelet House (collectively, "Pan American").

This motion is based on the accompanying Memorandum in Support of Plaintiffs' Motion to Dismiss the Counterclaim. As set forth more fully in the accompanying memorandum, Pan American has not stated a claim for abuse of process against Plaintiffs for two reasons. First, Pan American fails to allege that Plaintiffs used "a legal procedure for a purpose not intended by the procedure." *Food Lion, Inc. v. United Food & Commercial Workers*

*Int'l Union*, 567 S.E. 2d 251, 253 (S.C. Ct. App. 2002). Second, Pan American does not allege facts suggesting that some “ulterior purpose” other than remedying race discrimination was Plaintiffs’ “sole or paramount reason for acting.” *S. Glass & Plastics Co. v. Duke*, 626 S.E.2d 19, 24 (S.C. Ct. App. 2005).

DATED: August 4, 2011.

Respectfully submitted,

/s/ D. Peters Wilborn, Jr.

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# CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2011 I electronically filed Plaintiffs' Motion To Dismiss the Counterclaim and the Memorandum In Support of Plaintiffs' Motion To Dismiss the Counterclaim with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all counsel who have entered an appearance in this action.

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